

MEMORANDUM OF UNDERSTANDING  
between the  
U.S. ARMY CORPS OF ENGINEERS  
and the  
ENVIRONMENTAL PROTECTION AGENCY  
and the  
U.S. FISH & WILDLIFE SERVICE  
and the  
STATE OF ALASKA, DEPARTMENT OF NATURAL RESOURCES  
and the  
NATIVE VILLAGE OF TYONEK

I. INTRODUCTION AND PURPOSE

This Memorandum of Understanding (“MOU”) sets out the terms of cooperation between the U.S. Army Corps of Engineers (“Corps”); the Environmental Protection Agency (“EPA”); the U.S. Fish & Wildlife Service (“USFWS”); the State of Alaska, Department of Natural Resources (“ADNR”); and the Native Village of Tyonek (“NVT”) in the development of a Supplemental Environmental Impact Statement (“SEIS”) and other related documents, reports, or evaluations (as those matters are defined and applied at 40 CFR Part 6) in connection with the evaluation of all Federal and State permits, approvals, and licenses necessary for the development, construction, and operation of a surface coal mining operation known as the Chuitna Coal Project (“Project”) near the Native Village of Tyonek. The MOU is entered into under the authority of 40 CFR 1500, *et seq.* The SEIS and other related documents will comply with all provisions of the National Environmental Policy Act (“NEPA”), as amended, and applicable regulations (especially 40 CFR Part 1500, *et seq.*, and 33 CFR Part 325, App. B) and guidelines relating to NEPA, together with all applicable local and State laws. PacRim Coal, LLC (“PRC” or “Applicant”) is the proponent of the “Project.”

A separate MOU relating to the Project was executed by the EPA (as the lead agency), the Applicant, and the cooperating agencies. This MOU was signed by EPA on March 9, 2009. On October 31, 2010, the EPA’s authority to issue and enforce mining permits in Alaska for wastewater discharges issued under the Clean Water Act National Pollutant Discharge Elimination System program was transferred to the Alaska Department of Environmental Conservation. Consequently, the EPA recently discontinued their role as lead agency for the Chuitna SEIS, and the Corps accepted the lead agency role.

The decision to prepare a SEIS is made pursuant to 40 C.F.R. § 1502.9 and the Council on Environmental Quality (“CEQ”) Forty Most Asked Questions (No. 32). The previous Environmental Impact Statement (“EIS”) for the Project was completed in February 1990. During development of the SEIS, all relevant information from the previous EIS will be incorporated to the maximum extent possible. The SEIS will be a stand-alone document.

II. GENERAL PROVISIONS

1. The Corps is the lead agency for the SEIS as defined at 40 CFR 1501.5. The Corps shall manage activities relating to the project in an expeditious manner and in conformity with applicable laws and regulations.
2. The Cooperating Agencies for the SEIS are EPA, USFWS, ADNR and NVT (collectively referred to as “Cooperating Agencies”) as defined at 40 CFR 1501.6. The Cooperating Agencies have the responsibility to assist the lead agency by participating in the NEPA process at the earliest possible time;

in developing information and preparing environmental analyses including portions of the SEIS concerning which the Cooperating Agency has special expertise; and in making available staff support at the Corps' request to enhance the Corps' interdisciplinary capabilities. The Cooperating Agencies shall carry out any activities relating to the Project in an expeditious manner and in conformity with applicable laws and regulations.

3. The parties to this MOU recognize that a third-party contractor ("Contractor") has been retained by the Applicant to provide supportive expertise, personnel, and technical capabilities required for the preparation of the SEIS and related documents. A separate MOU between the Corps and the Applicant was signed on September 9, 2011 which provides the procedures to be followed by the Contractor in the development of the SEIS. The Contractor was selected in accordance with Regulatory Guidance Letter 05-08 and 40 CFR 1506.5. Any subcontractors retained by the Contractor will be subject to the requirements of 40 CFR 1506.5.

4. The Corps and the Cooperating Agencies agree to:

a. Review all substantive phases of the SEIS preparation, including, but not limited to:

- (1) baseline data,
- (2) scoping,
- (3) development of alternatives,
- (4) review of technical reports,
- (5) impact analysis,
- (6) Preliminary Draft SEIS,
- (7) Draft SEIS; and,
- (8) Final SEIS.

Participation in such reviews of the SEIS work product shall be limited in the first instance to the Corps and the Cooperating Agencies. At the Corps discretion, the Applicant may be given the opportunity to participate in such reviews to ensure that technical information is accurate and complete. The Corps may preclude review by other interested parties. The Corps will use the environmental analyses and recommendations of the agencies as deemed appropriate by the Corps, consistent with the Corps' responsibilities as lead agency.

Regulations define certain review periods for specific work products. For other work products, the Cooperating Agencies will provide comments directly to the Corps within thirty (30) calendar days of receipt on the substantive work products listed and within twenty (20) calendar days of receipt for any interim work products (unless a different mutually agreed upon timeframe is established).

b. Designate representatives as primary points of contact for the SEIS. The designated representatives shall meet regularly until the end of the SEIS process.

c. Have their respective representatives attend regular meetings with Federal, State, Tribal, regional, and local agencies for the purpose of increasing communication and receiving comments, as same may be required by law, in preparation of the SEIS.

d. Throughout the SEIS development process, the Corps may find it necessary to develop subgroups related to specific resource topics related to the SEIS. The Corps will invite the Cooperating Agencies and the Applicant to participate in the subgroup, as appropriate.

### III. PROCEDURES

1. Following approval of the scope of work, the Applicant may request, and the Corps shall establish, a schedule pursuant to 40 CFR 1501.8(a). At the Corps' direction, the Contractor will submit a Work Plan which shall include the proposed schedule to the Corps, the Cooperating Agencies, and the Applicant. The Corps, the Cooperating Agencies, and the Applicant will discuss the schedule of milestone dates for major SEIS tasks and products. Any schedule established by the Corps may be modified by the Corps after consultation with the Cooperating Agencies and the Applicant. The Corps has final approval authority over any proposed schedule or modification thereof.
2. The Corps will be responsible for organizing and conducting public meetings as required by applicable regulations. The Contractor will provide administrative support and logistical arrangements for these public meetings. The Corps will be the recipient of all comments. The Contractor shall compile the comments, in coordination with the Corps, and provide a copy of the compiled comments to the Applicant, the Cooperating Agencies, and the Corps.
3. Any and all work performed by the Contractor in preparation of the SEIS, including, but not limited to, draft documents and data analyses, shall be submitted directly to the Corps. The Corps will then distribute the work products to the Cooperating Agencies, and the Applicant as appropriate. The Corps may, at its discretion, direct that certain work performed by the Contractor, be submitted directly to the Applicant, with a copy furnished to the Corps. In no case will the Applicant review, modify, or edit the Contractor's work prior to its submission to the Corps, or be provided the opportunity to do so.
4. The Corps shall fully engage the Cooperating Agencies and the Applicant (if appropriate) whenever a decision is to be made regarding substantive work or material to be included in the preparation of the SEIS. In all instances involving questions as to the content or relevance of any material (including all data, analyses and conclusions) prepared by the Contractor, the Corps will make the final determination on the inclusion or deletion of any such material in documents produced for the SEIS. If the Corps does not intend to incorporate comments or other information provided by the Cooperating Agencies or the Applicant, the Corps shall discuss the issue with the parties involved to attempt to resolve the matter.
5. The Corps and the Cooperating Agencies (as approved by the Corps) shall have access to and the opportunity to review all materials, procedures, and underlying data used by the Contractor in developing any and all reports, including, but not limited to field reports, subcontractor reports, and interviews with concerned private and public parties, whether or not such information may be reflected in the draft or final report submitted to the Corps or the Cooperating Agencies.
6. Joint meetings between the Applicant, the Cooperating Agencies, the Corps, and the Contractor will be held as often as necessary to ensure the timely and efficient preparation and development of the SEIS. However, the Corps reserves the right to work directly with the Contractor. The Cooperating Agencies will coordinate with the Corps prior to working on any significant issues with the Contractor. When meetings or conversations on significant matters occur between the Corps and the Contractor without the participation of the Applicant, the Contractor will furnish written notification of the meeting and its general subject in the monthly report. The Corps, in consultation with the Cooperating Agencies, may instruct the Contractor to meet with the Applicant, without the Corps, when the topic to be discussed falls within the purview of a Cooperating Agency that will be present. The Corps reserves the right to consult directly and independently with other Federal, State, and local officials during SEIS preparation to assure compliance with NEPA, as well as with other applicable laws and regulations.

7. The Corps shall be solely responsible for directing the modification, exclusion, or inclusion of any data, evaluations, or other material in the SEIS, or in any other report being prepared by the Contractor or its subcontractors for the Project. The Corps will independently evaluate the information to ensure it is technically adequate and not biased. The Corps shall independently evaluate the SEIS prior to its approval and take responsibility for its scope and contents.

8. All Federal Register notices will be the responsibility of the Corps.

#### IV. TERMINATION

1. Any party to the MOU may terminate this agreement upon thirty (30) days advance written notice to the other parties.

2. In the event of termination of the MOU or the consulting contract, it is agreed as follows:

a. The Corps may assume total responsibility for preparing an SEIS should the requirement for an SEIS continue, subject to the availability of funds.

b. Should the SEIS process continue, the Cooperating Agencies will continue to address issues pertaining to the Project pursuant to applicable law.

#### V. DISPUTE RESOLUTION

1. Should significant differences exist between the Corps and a Cooperating Agency every effort will be made to resolve these differences, including using available alternative approaches to dispute resolution techniques. Issues that cannot be resolved at the staff level may be elevated to the Corps District Commander for the Alaska District and the appropriate level at the Cooperating Agency for resolution. The District Commander will render a final decision on the scope of the issues, analyses, or conclusions for inclusion in the SEIS and ensure that any disagreements are documented in the SEIS.

2. If the District Commander's decision is contrary to the position of a Cooperating Agency, the Corps will determine if the differing positions can be clearly presented in the SEIS. If so, the differing positions will be included in the SEIS for the public review and comment. If the SEIS does not fully meet a Cooperating Agencies' NEPA compliance requirements, the Cooperating Agencies may independently address any existing NEPA obligations by separate means.

#### VI. MODIFICATION

1. The MOU may be modified only by a written amendment agreed to, and signed, by all the parties to this MOU.

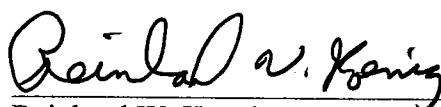
#### VII. MISCELLANEOUS

1. The Corps and Cooperating Agencies shall, to the extent permitted by applicable law and regulations, maintain the confidentiality of all information, documents, or material which the Applicant designates as confidential.

2. Nothing in this agreement shall be construed as altering or limiting any agency's responsibility or ability to act in accordance with all applicable Federal and State laws and regulations. Any agency's undertakings pursuant to this agreement are subject to the availability of funds.

3. This agreement does not take the place of the federal government responsibility to consult with potentially impacted Federally Recognized Tribes on a Government-to-Government basis.
4. This agreement does not alter the EPA's responsibilities under NEPA and Section 309 of the Clean Air Act to conduct an official independent review of the Draft SEIS and Final SEIS during public comment periods of these documents.
5. Any notice required or permitted under this MOU must be given in writing and must be submitted to each designated representative by registered or certified mail, return receipt requested (See Enclosure 1 for list of designated representatives). Any party may, by prior written notice to the other parties, change its notification address or its designated representative.
6. This MOU will be effective as of the last date signed below.
7. This instrument has been executed in multiple counterparts, all which are identical and each of which should be deemed an original and all of which constitute one and the same instrument.
8. This agreement shall be interpreted in accordance with Federal law.
9. This MOU constitutes the entire agreement among the parties with regard to the SEIS process for the Chuitna Coal Project. This MOU supersedes the prior agreements entitled "Memorandum of Understanding among the U.S. Environmental Protection Agency, Region 10, the U.S. Army Corps of Engineers, Alaska District, the U.S. Fish and Wildlife Service, The Alaska Department of Natural Resources, and the Native Village of Tyonek Concerning the Chuitna Coal Project," signed by the EPA on March 9, 2009, and any subsequent addendums thereto. Additionally, a separate MOU between the Corps and the Applicant was signed on September 9, 2011 which provides the procedures to be followed by the Contractor in the development of the SEIS.

SIGNATURE PAGE:



12 Oct 11

Reinhard W. Koenig  
Colonel, US Army  
Commanding

Date

Katherine Kelly  
Director, Office of Ecosystems, Tribal and Public Affairs  
EPA Region 10

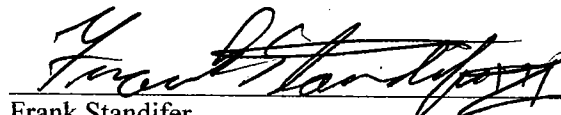
Date

Ann Rappoport  
Field Supervisor, Anchorage Office  
U.S. Fish and Wildlife Service

Date

Tom Crafford  
Director, Office of Project Management and Permitting  
Alaska Department of Natural Resources

Date



10.12.2011


Frank Standifer  
President  
Native Village of Tyonek

Date

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Reinhard W. Koenig Date  
Colonel, US Army  
Commanding

\_\_\_\_\_  
Katherine Kelly Date  
Director, Office of Ecosystems, Tribal and Public Affairs  
EPA Region 10

 10/19/2011  
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Ann Rappoport Date  
Field Supervisor, Anchorage Office  
U.S. Fish and Wildlife Service

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Tom Crafford Date  
Director, Office of Project Management and Permitting  
Alaska Department of Natural Resources


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Frank Standifer Date  
President  
Native Village of Tyonek

SIGNATURE PAGE:

Reinhard W. Koenig  
Colonel, US Army  
Commanding

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Date

 11/7/11

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Kate Kelly

Date

Director, Office of Ecosystems, Tribal and Public Affairs  
EPA Region 10

Ann Rappoport  
Field Supervisor, Anchorage Office  
U.S. Fish and Wildlife Service

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Date

Tom Crafford  
Director, Office of Project Management and Permitting  
Alaska Department of Natural Resources

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Date

Frank Standifer  
President  
Native Village of Tyonek

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Date

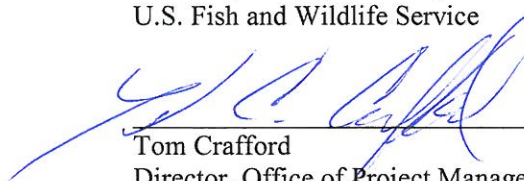


SIGNATURE PAGE:

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Steve Meyers Date  
U.S. Army Corps of Engineers  
Chief, South Branch, Regulatory Division

\_\_\_\_\_  
Michelle Pirzadeh Date  
Regional Administrator  
EPA Region 10

\_\_\_\_\_  
Ann Rappoport Date  
Field Supervisor, Anchorage Office  
U.S. Fish and Wildlife Service

 23 Nov 2011  
\_\_\_\_\_  
Tom Crafford Date  
Director, Office of Project Management and Permitting  
Alaska Department of Natural Resources

\_\_\_\_\_  
Frank Standifer Date  
President  
Native Village of Tyonek

Enclosure 1

Chuitna Coal Project SEIS Designated Representatives

<b>TO THE CORPS:</b> Serena Sweet U.S. Army Corps of Engineers Post Office Box 6898 (CEPOA-RD) JBER, Alaska 99506-0898	<b>TO THE EPA:</b> Jamey Stoddard US Environmental Protection Agency 1200 6th Avenue, Suite 900 Seattle, Washington 98101
<b>TO THE USFWS:</b> Phil Brna U.S. Fish and Wildlife Service 605 West 4th Avenue, Room G-61 Anchorage, Alaska 99501	<b>TO THE ADNDR:</b> Russell Kirkham Department of Natural Resources 550 West 7th Avenue, Suite 920 Anchorage, Alaska 99501
<b>TO THE NVT:</b> Frank Standifer Native Village of Tyonek Post Office Box 82009 Tyonek, Alaska 99682-0009	